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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,931	01/08/2002	Marc Wasberg	2302.2060	8802
5514	7590	10/14/2003		
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112				
			EXAMINER BECKER, DREW E	
			ART UNIT 1761	PAPER NUMBER

DATE MAILED: 10/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/937,931	WASBERG ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Drew E Becker	1761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 January 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

## **DETAILED ACTION**

### ***Specification***

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.
2. The disclosure is objected to because of the following informalities: it lacks section headings, such as "Summary of the Invention".

Appropriate correction is required.

### ***Claim Objections***

3. Claims 4-7 and 10-14 are objected to under 37 CFR 1.75(c) as being in improper form because they are multiple dependent claims. See MPEP § 608.01(n).

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Claims 1-2, 5-6, 15, and 17 recite "it". It is not clear what "it" is.
7. Claim 3 recites the limitation "the adjoining line". There is insufficient antecedent basis for this limitation in the claim.

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8. Regarding claim 10, the phrase "preferably" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention.
9. Regarding claim 13, the phrase "particularly" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention.
10. Claims 13-14 recite the limitation "the or each product". There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1-2, 4-9, 11, 13, and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Jud [Pat. No. 4,658,963].

Jud teaches an item comprising a product (Figure 4, #5), a flexible film enclosing the product and an amount of gas (Figure 4, #1), a precut line perpendicular to the longest side (Figure 2, #3), opening the package by bending it to rupture only the precut line

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(Figures 4-5), several products of equal size within the package (Figure 7), the precut line located adjacent two of the products (Figure 7, #28), the film having two superposed layers with the precut in a bottom layer (Figure 1, #2), the use of polypropylene (column 3, line 54), the product being chocolate (column 3, line 2), a method of making the item wherein the film is shaped first (column 2, lines 45-61; Figure 1, #2), and a device for making the item comprising a packaging machine (column 2, line 56).

13. Claims 1-4, 7, and 11-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Haiss [Pat. No. 4,290,526].

Haiss teaches an item comprising a product (Figure 2, #9), a flexible film enclosing the product and an amount of gas (Figure 1a, #1), a precut line perpendicular to the longest side (Figure 1a, #3), opening the package by bending it to rupture only the precut line (Figures 1-2), a joining line (Figure 1, #4), the film having two superposed layers (column 2, lines 1-5), the use of polypropylene and polyethylene (column 2, lines 4-5), the product being chocolate or ice cream (column 1, line 10), a method of making the item wherein the film is shaped first (column 2, lines 1-38), and inherently including means for making the item.

14. Claims 1-4, 7-13, and 15-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Marbler [Pat. No. 5,934,809].

Marbler teaches an item comprising a product (Figure 5, #26), a flexible film enclosing the product and an amount of gas (Figure 4, #16), a precut line perpendicular to the longest side (Figure 4, #18), opening the package by bending it to rupture only the

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precut line (column 5, line 48), a joining line (Figure 3, #19), the film having two superposed layers with the precut extending through an outer layer (Figure 6, #21-22), the use of polypropylene and polyethylene (column 2, lines 15-25), the product being chocolate (column 5, line 66), a method of making the item wherein the film is shaped first (column 5, lines 25-34), and a means for making the item (Figure 1).

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wysocki [Pat. No. 3,451,539], Jeannin [Pat. No. 5,437,881], Sparks [Pat. No. 3,207,299], Redmond [Pat. No. 3,986,640], Redmond [Pat. No. 5,494,192], and Fienup et al [Pat. No. 2,975,068] teach items which are opened by bending.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.



Drew E Becker  
Examiner  
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